

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

State of New Hampshire,)
)
)
Complainant)
v.) Cr. No. 1:24-cr-00038-JL-TSM
)
Destinie L. Berard)
)
Defendant.)

MOTION TO STAY JUDGMENT

NOW COMES Defendant Destinie L. Berard, *pro se*, and states:

1. Defendant is a resident of Massachusetts.
2. The State of New Hampshire alleges:

That on May 30th, 2022, at 12:45 p.m., that [Ms.Berard] knowingly violated a final order of protection issued by the 10th Circuit Court Family Division in Brentwood on July 8, 2020 [by Judge Polly Hall]. In that [Ms.Berard] came within 300 feet of the protected party [Massachusetts Police Officer Patrick Szymkowski], in said order at 1 Lowell Street, St. Elizabeth of Hungary Mission Church.

See transcript of Video Arraignment/Bail Hearing held on March 18, 2024.

3. Defendant has been charged by the State of Hampshire with “Violation of Protective Order: RSA 173-B:9” and been notified the State intends to seek class A misdemeanor penalties.¹

¹ A copy of the notice is provided as an attachment to this pleading.

4. The Sixth Amendment requires that an attorney be provided to criminal defendants who are unable to afford their own. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
5. The Sixth Amendment also provides a right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).
6. Defendant's argument in her *Notice of Removal* relied on the Fifth Circuit's Opinion in *United States v. Rahimi*, 61 F. 4th 443 (5th Cir. 2023).
7. *Rahimi* is presently pending appeal in the United States Supreme Court, No. 22-915. At issue is whether 18 U.S.C. 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.²
8. The United States Supreme Court held oral argument on November 7, 2023 in *Rahimi*.³
9. The United States Supreme Court has not yet decided *Rahimi*.
10. Defendant believes that RSA 173-B:9 violates the United States Constitution on its face, for the same or similar reasons that the Fifth Circuit gave in *Rahimi* that 18 U.S.C. 922(g)(8), violates the U.S. Constitution on its face.
11. If RSA 173-B:9 violates the United States Constitution on its face, Defendant cannot receive a fair trial in the State of New Hampshire if she is charged with violating RSA 173-B:9.
12. For these reasons, Defendant respectfully requests that this Court stay judgment in this matter until after such time as the United States Supreme Court issues its opinion in *United States v. Zackey Rahimi*, No. 22-915.
13. Defendant also believes that RSA 173-B:9⁴ "purports to command the state courts to ignore federal rights"⁵ for other reasons as well, but may require the assistance of professional counsel to further develop such argument.

² The "Questions Presented" are provided as an attachment to this pleading.

³ Available online at

https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-915_986b.pdf

⁴ A copy of the statute is provided as an attachment to this pleading.

⁵ *People of the State of California v. Sandoval*, 434 F.2d 635, 636 (9th Cir. 1970)

14. Consequently, in the alternative, and for these reasons, Defendant respectfully requests that this Court stay judgment in this matter for 30 days, or until Thursday, June 27, 2024.
15. Defendant respectfully requests that entry of judgment be set forth in a separate document. Fed. R. Civ. P. 58(a).

WHEREFORE, Defendant respectfully requests that this Court:

- A) Stay judgment in this matter until after such time as the United States Supreme Court issues an opinion in United States v. Zackey Rahimi, No. 22-915.; or, in the alternative,
- B) Stay judgment in this matter for 30 days from the date of entry⁶ of this Court's order, or until Thursday, June 27, 2024; and,
- C) For other such relief as is just and equitable.

Respectfully submitted,

/s/ Destinie Berard

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May 30, 2024.

⁶ The Court's order remanding this case to the state court is dated May 9, 2024, but was entered on May 28, 2024.